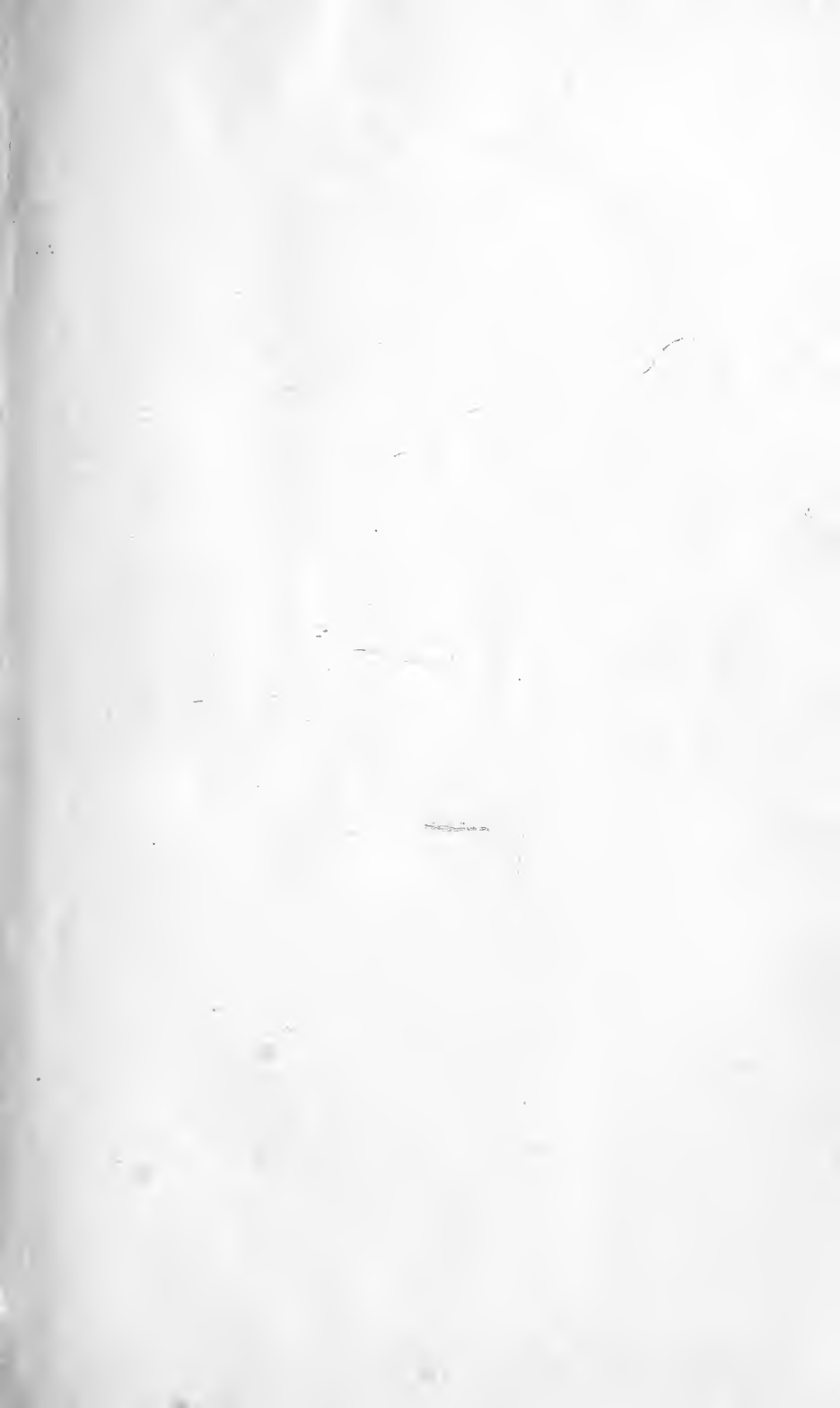
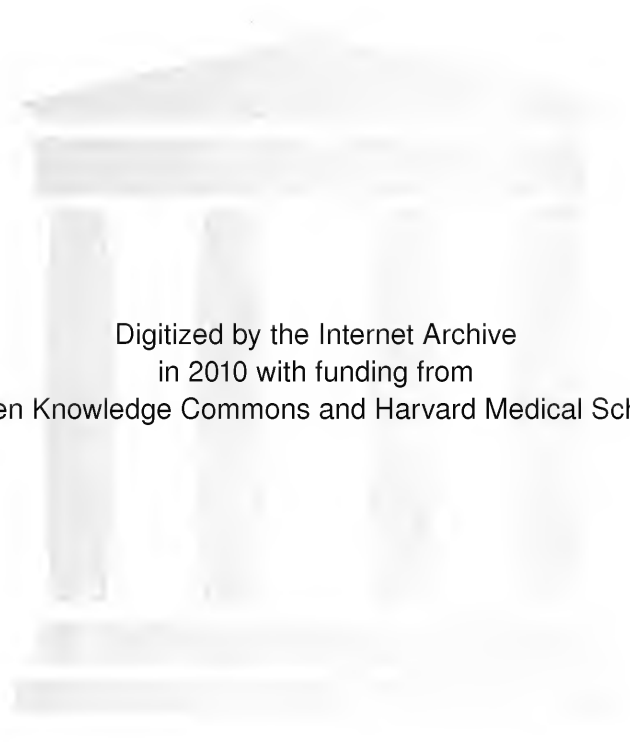


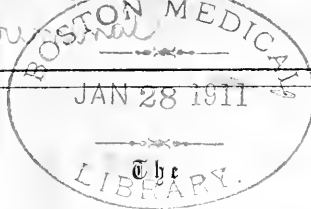
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Great Crime

OF THE

Nineteenth Century.

WHY IS IT COMMITTED?
WHO ARE THE CRIMINALS?
HOW SHALL THEY BE DETECTED?
HOW SHALL THEY BE PUNISHED?

BY EDWIN M. HALE, M. D.

CHICAGO:

C. S. HALSEY, 147 S. CLARK ST.—BUFFALO, 238 MAIN STREET.

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How shall they be Detected?
How shall they be Punished?

BY

EDWIN M. HALE, M. D.,

Professor of Materia Medica and Therapeutics in Hahnemann Medical College; Author of "The Homœopathic Materia Medica of the New Remedies;" "A Monograph on Gelseminum" and "Retroversion of the Uterus." Member of the American Institute of Homœopathy; of the Illinois State Homœopathic Association; of the Western Institute of Homœopathy; Honorary Corresponding Secretary of the Massachusetts State Homœopathic Medical Society. Honorary Member of the New York State Homœopathic Society; of the Michigan Institute of Homœopathy; Associate Editor of the North American Journal of Homœopathy; of the American Homœopathic Observer, etc., etc.

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C. S. HALSEY, 147 S. CLARK ST.—BUFFALO, 238 MAIN STREET.

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To the Medical Profession.

MY DEAR COLLEAGUES :

In my "*Treatise on Abortion ; its causes and consequences, and their medical and surgical treatment :*"—so favorably received by you, I did not enter into the discussion of the subject of *Criminal Abortion*.

I am gratified to note an increasing desire, among the best men of all medical schools, to adopt measures which shall enlighten the public to an appreciation of the enormity of the crime, and to devise means to arrest its progress.

No essay on *Unjustifiable Abortion* has yet been published that fully meets the demand of the times.

The nature of the crime has not been fully explained ; the various flimsy excuses given for its commission, exposed ; nor the criminals boldly and fearlessly pointed out.

I propose to aid you in the work of arresting this great social evil by embodying the above *desiderata* in this essay.

Give me your hearty co-operation and support in my feeble efforts in this direction.

Some of you may think my views too extreme and radical, and my propositions impracticable.

You must remember, however, that no great reform can be initiated, no real progress sustained, except upon the basis of radical principles.

I give this little work into your hands, believing you will make the best possible use of it in the interests of the profession and common humanity,

Yours very sincerely,

EDWIN M. HALE, M. D.

CHICAGO, May, 1867.

Introduction.

THE author does not propose, in this pamphlet, to treat of the statistics, or therapeutics of abortion.

Those portions of the subject have already been fully considered in a previous work, which has been for some time in the hands of medical men.

The author, however, takes this opportunity to confirm certain assertions previously made, in order that those who may not have the work referred to, may understand the allusions contained herein, as to the *extent* of the crime.

The *statistics* recorded in the "Treatise on Abortion, (Part 1,)" are sufficiently appalling, but the *true* statistics, if known, would be *more* appalling than are there represented. The assertion that *two-thirds* of the number of conceptions occurring in the United States, and many other civilized countries, are destroyed *criminally*, would not be overrating the extent and prevalence of this fearful crime.

Criminal abortion is not to be reconsidered as a crime in *one* sense only, but in many.

I. IT IS A CRIME AGAINST THE STATE.

It lessens the population of a State or country, in an appalling degree. The ratio of births over deaths of all kinds, is rapidly decreasing. It is even now, only among the foreign population, that the births are in excess. At this rate, if the ratio of foetal deaths over births goes on increasing, it will not be many years before the Americans left on American soil, will be few and far between.*

Criminal abortion is, therefore, an offence of a national and political character, and the national government ought to interpose some check to its alarming increase.

* On the Decrease of the Rate of Increase of Population now obtaining in Europe and America. By Horatio Robinson Storer, M. D.—*American Journal of Science and Arts*. Vol. xlviii. March, 1867.

II. IT IS A CRIME AGAINST PHYSIOLOGY.

It arrests the normal course of the functions of physical life. Pregnancy is a natural condition which cannot be arrested without the most calamitous results, not only to the local condition of the reproductive organs, but to the general physiological functions of the whole system.

III. IT IS A CRIME AGAINST MORALITY.

Its commission disobeys the Divine command, "Thou shalt not kill." We cannot consider the subject in a purely physiological light. The impregnated ovum is not merely a *living being*. This would imply that it was nothing superior to the embryo of one of the brute creation. The human embryo is possessed of something more than animal life. *From the moment of conception it is the receptacle of a human soul.* When a child is born, we all believe a human soul to be habilitated by the still undeveloped body. The spiritual nature only manifests itself in direct ratio to the development of the brain and other portions of the body.

Psychologically, we must admit that the *soul* exists in the impregnated ovum from the date of conception, and keeps pace in its manifestations, with the development of the foetus until the date of birth, as well as afterwards.

It follows then that the destruction of the embryo or foetus at any period after conception, is in violation of the divine law. *It destroys the receptacle of a soul.*

It is the popular belief that, if the menses are arrested by conception, but are forced to return after the lapse of a few days only, beyond their natural time, that no harm is done. This is an error. It is *not* the menses that return, but an abortion (with hemorrhage,) has been induced. The menses do not occur until another period has elapsed. The crime is in reality, the same as when committed at a much later date.

The date of "quickenings" so called, cannot be considered of any real importance in its physiological relation. The idea that, at that date, the embryo becomes a *soul*, is now obsolete.

IV. IT IS A CRIME AGAINST THE LAW.

The "Jurisprudence of Abortion," which occupied "PART IV," was not fully elaborated owing to the press of professional engagements, as well as the objection of the publisher to swell the already large size of the work.

I propose to discuss, in as complete a manner as possible, the Jurisprudence of Abortion, so far as it relates to the recognition of the real criminals connected with the act; the best method by which they may be detected and brought to trial; and their appropriate punishment.

The following questions will have to be considered, in order to have a clear idea of the subject in its legal relations.

1. Why is the crime committed?
2. Who are the criminals?
3. How shall they be detected?
4. How shall they be punished?

A new law is herein proposed, which law, or a similar one, should be enacted by each State in the Union, as no law has yet been framed by any State, which meets the requirements of strict justice, or properly provides for the prevention and punishment of a crime, which more than all others, is *The Crime of the Nineteenth Century*.

NOTE.—Even *ovular abortion*, or the prevention of conception, may, under some circumstances, be considered in the light of an offence against the State, and against physiology; against the State, because it prevents the normal increase of population, and against physiology, because it prevents the occurrence of pregnancy, which is a normal physiological condition, and often absolutely necessary to the physical and moral health of woman.

Ovular abortion has never been recognized as a crime, or as an offence, by the laws of any modern nation. The Hindoos, however, considered it a crime, and allotted its punishment. It is also implied to be a crime in the Divine Word, in the injunction given to the human race to "multiply and replenish the earth."

There are several passages in the Word, which directly rebuke any act which would prevent the occurrence of conception; (see Gen., xxxiii-9, 10,) and in one instance, the offence was severely punished.

In order to be consistent, we must consider the *unjustifiable* prevention of conception as an offence of some magnitude. It may be *justifiable* in certain cases, as when the *health* of the mother demands the prevention of impregnation, or in certain peculiar, social and domestic conditions.

It should be advised, and even made obligatory on the parents, in many cases where there is a reasonable fear that premature labor, dangerous to both mother and child, may have to be resorted to.

SECTION I.

WHY IS IT COMMITTED?

While it is admitted that criminal abortion has been practiced since the time of the ancients, it is also admitted, that at no period in the history of the world, is the destruction of the ovum after conception, so prevalent among all classes and conditions of persons, as at this day. This is especially true of the extent of the crime among civilized nations, particularly in the great towns and cities of such nations.

The same influences are doubtless at work impelling to the commission of the crime, that existed among the ancient Hindoos, Egyptians, Greeks, Romans, and other nations.

A brief enumeration and mere mention of the influences which impel to the commission of criminal abortion, is all that can be made in this limited treatise. They are:

Poverty,	Adultery,
Ill Health,	Seduction,
Moral and Physical cowardice,	Prostitution,
Loss of beauty,	Rape,
Love of fashionable life, etc.,	Disgrace of maternity.

POVERTY.—Among the lower and middle classes of society, this plea is one of the most prominent. The parents will declare their inability to support any more children. This, too, when they will probably spend more money for the commission of the crime, the medical treatment of its consequences, the increased expense entailed during the illness, or the unnecessary luxuries purchased in a year, than would suffice for the economical support of a child for ten years. Honest, frugal, and moral parents usually find no insuperable difficulty in rearing a large family of children; yet it is a common thing to see young married people in good health, resort to criminal abortion in a first pregnancy, because they are *not able to support an infant!* This is adding *blasphemy* to murder.

ILL HEALTH.—One of the most astonishing of all the inconsistencies of human nature, is the fact, that women who possess the highest *principle* in all else, will resort to

the most shallow pleas for the destruction of the ovum. *General* ill health is frequently mentioned by mothers as a reason why a pregnancy should be arrested. No plea could be more false, for, to quote the language of Dr. Storer, "there is not a conceivable case where an abortion will not make it worse." The consequences of an abortion, whether immediate or remote, are to depress the vital forces, cause general disturbance of function, and in most cases, serious local disease of a functional or organic nature.

It would be amusing, were it not saddening, to listen to the special pleas of local disorder, which the parents of the child unborn resort to, with the intention of convincing the physician that the crime ought to be committed. A young woman, pregnant with her first child, and suffering from the usual disagreeable symptoms of the first few months, will desire to get relief from the pains, the strange unpleasant sensations, and the causeless but indefinable forebodings which possess her mind. Another woman who has borne children will desire to be freed from the pains of a difficult labor, or an unhealthy pregnancy, the sufferings of which she vividly remembers. Still another will allege a cough, a headache, vomiting, and a hundred other disorders which on no account should be considered as conditions justifying interference. Sometimes it happens that young women, pregnant for the first time, hearing of pelvic deformities, monstrosities, puerperal convulsions, and the like, will imagine themselves the probable victims of such accidents, and attempt to convince the physician, and themselves, that theirs will be a case similar, *therefore* the fruit of conception should be destroyed.

There is a class of ignorant and garrulous nurses who are highly censurable for their reprehensible habit of talking to young wives (*enciente*,) of the pains and suffering of childbirth. They will detail with revolting minuteness, all the circumstances of the lying-in chamber, until, in the imagination of the young wife, it appears a room full of horrors. Such contemptible nurses should be discountenanced by medical men, and never be permitted to poison the minds of inexperienced patients.

Pregnancy is not, naturally, a condition of disease. It is made painful and abnormal by the same causes that lead to other diseased conditions. It is the belief of the writer, based on an extended observation and experience, that by

the proper use of exercise, diet, and particularly, medicinal remedies, properly selected and administered, pregnancy may be made comparatively free from pain or unpleasant sensations, and labor rendered free from suffering and danger. In natural, healthy parturition, there is little or no actual *pain*. *Painless relaxation and expulsive effort, devoid of suffering, should constitute a perfectly normal labor*. Abortion, on the contrary, is always attended by a great amount of immediate or remote suffering.

There are others who are to blame in this matter. The early education of women is defective in the extreme. Instead of being taught the great facts of physiology, especially those pertaining to the functions of the generative organs, the rearing of children, and the means of preserving health, their time is fritted away on music, French, higher mathematics, *et cetera*, until the time of their marriage, when they enter into all the great responsibilities of a wife and mother, without a single correct idea of the nature of those responsibilities, or the gravest duties of her position.

The mothers of young women are also censurable, because they do not give their daughters the benefit of their own experience. This they can do, if they are themselves ignorant of physiological facts.

MORAL AND PHYSICAL COWARDICE—Is the cause of much of the crime of which we are treating. This has been alluded to in the previous paragraph, in speaking of the fears of the real and imaginary dangers of childbearing. The woman who will allege as a plea for the crime, that she is afraid of the *suffering* to be endured during pregnancy and childbirth, is certainly destitute of all the bravery which rightfully belongs to humanity. It also implies a lack of christian faith and principle. Here again, the education of woman is in fault, for before the facts of physiological science, all these fears would, in most cases, vanish.

LOSS OF BEAUTY.—To a woman vain of her beauty, and fond of admiration, this seems a powerful plea. They look about them, and see those who, before they became mothers, were as beautiful and attractive as themselves, but are now faded, and perhaps worn by care and disease. They, therefore, begin to reason from false premises, and blame the function of childbearing with the destruction of beauty.

But maternity does not of itself destroy beauty or health. Those women whose constitutions are good, who have properly taken care of their health, are never as beautiful or healthful as during the period of childbearing.

At the present day, a thousand causes are at work to cause the vanishment of physical beauty, and the decline of woman's health. Even should these results follow, how much more beautiful and attractive is a maternity unsullied by crime, than all the physical beauty possible, if stained by the sin of child-murder!

Moreover, this plea is utterly untenable when we compare the results of abortion with those of childbearing. The danger to the destruction of beauty, health, and personal attractiveness, is tenfold greater from the former than from the latter. The experience of many years of practice has satisfied me that no one cause in existence contributes so much to the decay of womanly beauty, and the destruction of woman's health, as abortion. A single miscarriage, especially when caused by drugs or instruments, will cause greater ravages in the constitution, than the bearing of many children.

THE LOVE OF FASHIONABLE LIFE—Its pleasures and excitements—affords another selfish plea for the crime. A woman whose principle is not firmly grounded, will, on finding herself pregnant at the beginning of the fashionable season of balls, opera, etc., try to convince herself that she can put off the inconveniences of the pregnant state, until the season of dissipation is over. Acting upon this improper plea, the embryo is destroyed, and the unfortunate woman vainly fancies that she can atone for the crime by avoiding its commission in the future. What is her grief and punishment, however, to find, as many do, that when she ardently desires to be a mother, the boon is not granted? Sterility comes to punish her for the heinous crime of which she has been guilty.

In many instances the pleasures of fashionable life, for which she was willing to sacrifice the life of her unborn child, slip from her grasp, for the abortion brings sickness and perhaps death, or numerous other evils in its train, besides *remorse*, which will come sooner or later.

To the conscientious person, it is a matter of grief and surprise, what trivial pleas are put forward as excuses for the crime. An anticipated journey, a visit to friends, the

presence of visitors, and even a residence in a boarding house, are all made pretexts. The last one indeed, is quite commonly made use of.

I quite agree with a writer, whose name I cannot remember, that "the boarding house, and fashionable hotel, is often the grave of domestic virtue."

In these days of extravagance, a large proportion of those beginning married life, take up a temporary residence in a boarding house or hotel. In such places the inconveniences of rearing a family, or even passing through a pregnancy, is considered almost insuperable. This improper mode of living, so utterly at variance with all correct ideas of domestic life, is a prolific cause of criminal abortion. It is urged that it is impossible, or exceedingly inconvenient and expensive to have a family under those conditions, and so a crime is committed.

The above inducements to the crime, are all predicated on the supposed and admitted fact of the existence of an honorable married state.

But there are other inducements both in and out of that state, which ought to be mentioned.

ADULTERY—Is a frequent cause of a resort to criminal abortion. A married woman untrue to her marital vows, and lost to honor and duty, becomes pregnant by another than her husband. To hide her shame, a resort to the destruction of the unborn child is unfeelingly resorted to.

In the unmarried state there exists many sinful practices which afford pleas for the commission of the crime.

SEDUCTION AND DESERTION—Is one of the most fruitful causes. A young and hitherto virtuous woman, falls a victim to the false promises of a vile seducer. In a moment of passion, or with a heart full of confidence in her destroyer, she loses that crown of womanhood, virginity. A pregnancy follows, and with its occurrence, comes desertion, and she is left alone with her great shame; or if not deserted, marriage is refused or delayed. In the former case, driven to desperation, the victim often seeks to destroy her own life, or else plans the destruction of the fruits of her shame. In the latter case, the parties conspire to commit a deed which shall save them both from disgrace.

When the crime is committed to save the victim of seduction and desertion from shame, the world is apt to view

the act as justifiable, or a least wink at is commission. But the deed is none the less criminal in the one instance than in the other. The act is none the less *murder*, even if it be done to save the mother from disgrace. We are not justified in taking life for any other reason than that of *saving* a life of greater importance.

PROSTITUTION—The life of a prostitute is so inconsistent with maternity, that it will surprise no one to learn that when pregnancy does occur among that class, (which occurrence is happily rare,) a resort to criminal abortion is a natural consequence. Women who have sunk so low in the scale of social existence, who are so lost to all that is good in humanity, have no hesitation in committing any crime. Abortion is looked upon by such creatures, with the utmost indifference.

RAPE—Probably no plea for the induction of criminal abortion is so plausible, and so readily admitted, as when the pregnancy is the result of this most unnatural and revolting deed. If objection is made, we are met by the exclamation—shall the poor victim of violence be obliged to carry in her womb, and bring to independent life, the fruits of a crime so outrageous and disgusting!

The *argumentum ad hominem*, is often resorted to, in proof of the propriety of inducing abortion in such cases. It is asked—would you not destroy the embryo or fœtus in your own daughter, violated by a brutal Negro, Indian or white? This kind of argument, however, will not stand against the Divine injunction, “Thou shall not kill.”

Evidently the only proper procedure in such cases as the above, is to allow the child to be born alive. It will then be perfectly proper to remove it from the presence of the mother before she has looked upon the hateful object, and place it in the care of some charitable institution, where it will be forever hid from her eyes, forever ignorant of its own disgraceful origin, and where, perhaps, it may be reared with such care for its soul's welfare, that it may serve some use in the economy of Divine Providence.

THE DISGRACE OF MATERNITY!!—Does this alleged cause to the commission of the crime surprise any one? Among the most ancient nations, especially the Jews, also the best and noblest people of all countries, maternity was once considered a crown of honor. A mother was considered honorable, and revered in proportion to the number of her

children. How is it in the present day? Has not a great change taken place in this respect. I have seen and heard weak-minded and fashionable wives, sneer at a neighbor because of her large family. American women are in the habit of looking with apparent scorn, on the prolific German and English mothers who come among us. But which are the happiest? Which can boast of the best physical, moral, and mental health?

It is sad to contemplate the lamentable fact, that many persons actually look upon *maternity as a disgrace*.

It must not be supposed, however, that the inducements to commit the crime of foeticide are all confined to the mother of the offspring.

There are inducements which influence the abortionist, the otherwise upright physician, the manufacturer of nostrums, of instruments, and the whole class of *particeps criminis*. The great and overshadowing inducement is undoubtedly *money*, the love of which, we are taught in the Divine Word, is "the root of all evil."

The *abortionist* receives his price. Just as the paid assassin of the middle ages received his, and doubtless with less compunction, and less remorse while in the life. The *manufacturer* of nostrums, etc., would not engage in the business, did he not believe that a fortune would come of the sale of the murderous compounds.

There are, however, cases, where other influences than those belonging to money, are powerful inducements to the crime.

The seducer, or unlawful father of the child, commits the crime, or employs it to be done, in order to shield him from shame, exposure and disgrace.

There is one other inducement which ought to be mentioned in this place, although its mention is a painful duty which the writer would gladly avoid. It is an influence which is sometimes brought to bear upon physicians of the highest respectability, the most undoubted honor, and of the best principle.

To the lasting honor of such physicians, be it said, such influences are generally without avail. Rather than be guilty of the crime, they prefer the consequences of a refusal.

I refer to the solicitations, the urgent requests, and even the entreaties of parents who belong to the most respect-

able classes, persons of wealth and influence, and often of culture and refinement, and even of high *religious* standing!

To show that I am not mistating the prevalence of abortion in the higher classes, I quote from the *N. W. Christian Advocate*, March 13, 1867.

"Half of these," (women who are guilty of child-murder,) "are members of Christ's church."

"The Protestant church, is to-day, blackly stained with this crime of child-murder."

To prove the correctness of these statements, I also quote from Dr. Stewart, of Detroit:

"But few of either sex enter the marital relation without full information as to the ways and means of * * destroying the legitimate results of matrimony. * *

Among married persons, so extensive has this practice become, that people of high repute not only commit this crime, but do not shun to speak boastingly among their intimates, of the deed and the means of accomplishing it." (Pp. 7, 8.)

And also from the letter of Dr. Kyle, of Xenia, Ohio, quoted by Dr. Reamy:

"The abortions occur most frequently among those who are known as the *better class*; among church members, and those generally who pretend to be most polite, virtuous, moral, and religious. A venal press—a demoralized clergy, the prevalence of [medical] charlatanism * * * are the principal causes of the fearful increase of the abominable crime of criminal abortions."

But these gentlemen omit or neglect to mention a fact of which they must have been cognizant, namely: *that the honorable physician who refuses to accede to the wishes of such patrons, is often obliged to see their patronage transferred to other and less scrupulous persons.*

My colleagues will bear me out in the assertion, that such transfer of patronage is a growing evil which needs to be abated by some influence—moral, religious, or legal—which is not now in operation.

While we admit that no physician of standing in society, whose principles are well grounded, and whose ideas of crime are unvarying, can ever be tempted or influenced by such inducements, I do not hesitate to assert the possible immoral influence of such solicitations, entreaties, and bribes—upon the conscience of a young physician, poor, perhaps in need of patronage, and who has not those firm

resolutions to do no wrong, which are built only upon convictions of the highest and deepest morality.

SYMPATHY.—This emotion, so enobling and admirable in most cases, is often perverted from its proper channels, and made to be the cause of crime.

Even the best and purest of physicians cannot look upon the victim of a seduction, or a rape, without the keenest sympathy. That the best of medical men have been tempted to relieve the woman of the fruits of seduction and violence, is not surprising.

But the sympathies of the medical man, or any other person, should be under the dominion of religious principle. The injunction—"Thou shalt not kill," is as binding here as elsewhere.

Evidently the only consistent rule of action to adopt, is that laid down on a previous page when speaking of the victim of seduction or of violence.

SECTION II.

WHO ARE THE CRIMINALS?

We deem it our duty, as a medical man and a citizen, to point out fearlessly and perspicuously those who are in any way connected, criminally, with this great evil.

Generally they consist of *four* classes, viz:

The PRINCIPALS.

Accessories BEFORE *the fact*.

Accessories TO *the fact*.

Accessories AFTER *the fact*.

THE PRINCIPALS.

There are generally but two persons in a case of criminal abortion, who are to be considered as *principals*. In rare cases there may be more. Usually they stand, relatively, as follows:

1. *The Mother*. That the mother, who carries in her womb her unborn child, should be the chief criminal, is a startling proposition. Many persons will be inclined to disbelieve that such is the case. Those, however, who have

investigated the subject, or who have had opportunities for observation, will not dispute the assertion.

When it is known that the cases are very rare in which the crime is committed without the consent of the mother ; when it is known that the cases are few in which the child is destroyed without her urgent desire ; the proposition will not appear so improbable as at first sight.

Examine all the inducements to the crime, mentioned heretofore, and it will be found that the cases are few in which the mother herself does not originate the plea, or act willingly from influences brought to bear on her from other sources.

In either case, she must be considered as one of the *principals* in the crime.

Even in cases where the husband or other person persuades the mother to its commission, or to allow another person to destroy the foetus, she is still a principal ; for in no case need she succumb to influences not extending to actual physical force. The woman is individually responsible for all her acts of immorality.

In the married state, the wife has the moral and legal right to become a mother as often as possible. No law, human or Divine, can compel her to destroy, or permit the destroying of the fruits of conception.

Why then, in this view of the matter, should not the woman be considered the chief criminal, in nearly all cases, except when the abortion was induced on her person, by violence and against her will ?

The law in this respect, has not been strict enough to meet the demands of justice. It has recognized, in most instances, only the person who destroys the child by drugs, instruments, or some physical force.

In a few instances, it has named the mother, who, by either of the above means, has destroyed the child in her own womb.

In but one instance, (the law of California,) does the law make a *principal* of the woman on whom the abortion is induced. This should be done in nearly all instances. If the woman is innocent, and the crime was committed against her will, and she was powerless to prevent it, there are many ways in which her innocence could be made to appear.

Physicians are often informed against by one of the guilty parents, causing thereby, a malicious prosecution. Such a law would prevent such persecution.

In fact, she is often more guilty than the person inducing the abortion, for she may, by various improper means, as bribes, threats, and other inducements, influence the physician or other person to commit the crime, when his better judgment and principle would revolt against it.

I do not hesitate to assert that if the woman be made a principal in most cases of abortion, it would diminish the crime two-thirds, and perhaps to a greater extent, especially in large towns and cities.

2. *The Abortionist.* Among the most prominent are a class of creatures, of both sexes, known to the law as *Abortionists*. These people have their corresponding analogies in the Thugs of India, and murderers everywhere, and make it their chief business to destroy, for money, or worse inducements, the innocent and unborn child.

Not only does their loathsome presence poison the moral atmosphere of great cities, but they infest the smaller towns. They even leave their slimy track in the quiet country, and pollute the green fields, the flowery prairies, and the pure forests, where the homes of good men and women should be found.

In the great cities, however, these vampyres most abound. Certain streets and localities, *not* always low and abandoned in their moral surroundings, are selected by these creatures as their *habitat*. Sometimes their presence is known only by the bad location they occupy, for the simple "Doctor —," on the sign would indicate no nefarious calling. At other times, the word "Accoucher," is prostituted from its legitimate significance, and means to the abandoned, and sinful, only an "Abortionist." More frequently, they sail under the name of "Astrologist;" the possessor of an "Anatomical Museum;" one who treats "secret diseases," or attends to "private matters."

Female Abortionists, assume the name of "Midwives," "Nurses," "Fortune-tellers," "Madam —, Female Physician," *et cetera*, and under these apparently harmless avocations, ply their murderous trade.

In the country, the business is managed differently. Hundreds of persons of both sexes, are constantly perambulating the country, stopping in the smaller towns and

villages, who have for their chief means of subsistence, no other means of support than the induction of criminal abortion.

Ostensibly they are "Professors," "Doctors," "Lecturers," etc., advertising to cure all the ills which flesh is heir to; perform wonderful surgical operations; lecture on anatomy, physiology, health, hygiene, phrenology, and various other topics of which they are perfectly ignorant.

In their advertisements, their harrangues to the public, their conversations with private visitors, or in their lectures, they are sure to let drop some hint, by which the unprincipled may imply of what their secret business consists.

Follow these miscreants to their private consultation rooms, and you shall see where the most disgraceful scenes are enacted, and where hands and souls are stained by the blood of unborn babes.

Sometimes the vocation of "nurse," which should be a noble and holy calling, is prostituted to the sole purpose of criminal abortion. Such instances have come to the knowledge of medical men, as occurring in this, and other cities. In the instances alluded to, the monthly nurse has intimated to the lying woman, that there is no need of passing through the perils and pains of childbirth again; that in the early months of pregnancy the menses can be safely brought back; that they will instruct them how to accomplish it. By this means the minds of how many woman hitherto pure, may have been poisoned by such false and sinful temptations?

Among those who figure in the list of chief criminals, are the unnatural father, be he husband, seducer, or unlawful companion. Instances are on record, where the father has administered the potion, used an instrument, or resorted to physical force to destroy his unborn offspring.

We have even heard from undoubted evidence, that there have been instances where the *mother* of the pregnant woman—both belonging to those circles of society considered as "respectable,"—has, with her own hands, given the drug to cause abortion, and most revolting of all, used upon the person of her daughter, an instrument which caused the death of the *fœtus*.

In the name of humanity, religion, and civilization, is it not time that some serious and determined effort was made

by men of the medical, legal, and religious professions, to extirpate these murderers?

Shall we allow the end of the Nineteenth Century to close upon a scene which will make the devils laugh, and the angels weep?

Can no law be framed, having for its object the prevention and punishment of the crime of abortion; a law so broad in its scope, so perfect in its details, that the *principals* above named, cannot escape detection, trial, and condign punishment?

It is a hopeful sign to see that the clergy are becoming aroused to a sense of their duty in this respect, and I cordially endorse the remarks of the author* of a recent article on this subject, who says:

“Quack doctors, irregular practitioners, and the whole race of vagrant female hyenas who will take foetal life for fifty dollars, and gratuitously kill or ruin the credulous wife or “unfortunate,” should be treated as pests to be “purified by fire,” if necessary. The odor of such a burnt-offering would be more grateful than their offences which smell to Heaven.”

To recapitulate; The mother may be said to be *the* chief criminal (*a*) when the desire for, and the accomplishment of the crime originates within herself, *i. e.* when she destroys of her own will, by means of drugs or violence, the unborn child, or procures its destruction by others. She may be said to be *a* chief criminal when she is influenced by others, to the commission of the crime, and allows them to cause by any means the destruction of the child *in utero*.

Besides the mother, the person who administers, or causes to be administered, any drug, to a pregnant woman, or uses any instrument for the purpose of the destruction of the child, without the consent of the mother, becomes *the* chief criminal; but if the person giving the drug, or using the instrument, is employed or influenced in any way, by the mother or others, to the commission of the crime, he or she, becomes *a* chief criminal.

* N. W. Christian Advocate, March 13, 1867.

SECTION III.

ACCESSORIES BEFORE THE FACT.

Besides the *principals* guilty in a case of criminal abortion, there are other persons, in a majority of cases, who may be considered as accessories *before* the fact.

Some of these persons the law takes no cognizance of, and they generally go unpunished.

The laws of all States and Countries, need a thorough reformation in this respect, and although my views in this respect, may be deemed somewhat utopian, the time will come when the importance and practicability of such laws will be admitted.

Of those who should be considered as aiders and abettors of this crime, stands,

1. The unnatural father of the child, be he husband, seducer, or unlawful companion. In most cases, he is cognizant of the crime, he procures the services of the abortionist, obtains the drug, or sanctions the crime by his actual or implied permission. In either case, he should be considered guilty, and should be tried for his participation in the crime, and be punished severely.

2. Next in venality, rank those who manufacture and sell the nostrums which are so extensively used throughout this country, for criminal purposes.

I doubt if there is a drug store in the United States, or a place where medicines are sold, where we shall not find these vile nostrums exposed publicly for sale; their powers vaunted in gilt letters on illuminated placards, set in expensive frames, where all, the pure, as well as the vicious, may read in them the damning evidence of the shamelessness of the men and women of the Nineteenth Century!

To what depths of moral infamy is a nation descending when so large a class of tradesmen as the dealers in drugs constitute, can, without scruple, sell thus openly, these abominable death-dealing child-poisons!

They might as well expose for sale, and advertise such terrible poisons as the *aqua toffana*, which was the scourge of the Sixteenth Century; or indeed any poison which, in imitation of the language of the abortionist, "*should not be administered to persons whose life is obnoxious to any one,*"

as it will surely and certainly cause death, leaving no chance of detection of the cause thereof."

No good man or woman should cross the threshold of shops where such nostrums are sold. They should forever withdraw their patronage from them, thereby placing the seal of condemnation on the men who sell, and the places where are sold, the drugs known to cause criminal abortion.

The same condemnation should be visited upon druggists, and others who sell publicly or privately, to others than reputable physicians, certain instruments in common use, for the destruction of the *fœtus in utero*.

The manufacture and sale of drugs, or combination of drugs, for the purpose of expelling prematurely the fruits of conception, has reached an enormous and almost incredible extent in this country. For the last ten or twenty years, the columns of newspapers have been prostituted and defiled by the advertisements of nostrums, recommended for this abominable purpose. No expense is spared by the manufacturers to place their horrid wares before the public, and we understand that princely fortunes have been made from the proceeds of this most unnatural and death-dealing trade.

3. Those who manufacture and sell certain instruments and contrivances used by abortionists, and others, for the purpose of separating the *decidua* from the walls of the uterus, rupturing the membranes, or destroying the life of the child, should be considered criminals.

These instruments are so rarely used by reputable physicians, that they are seldom to be found in their possession. They are so rarely used for honorable and legitimate purposes, that the law might well step in and prohibit their manufacture and sale, except by one or two persons, who shall obtain a special license from the government for such purpose. Dealers in surgical instruments should be expressly prohibited from selling any instrument known to be used for criminal purposes, except to physicians of well known character for honesty and respectability.

Legal enactments should be made in every State, and even by the General Government, for the purpose of preventing the manufacture and sale of any of the nostrums which are known by the profession, to be capable of causing miscarriage. The law should expressly prohibit any

person or persons, from engaging in the manufacture or sale of such nostrums, and should visit the severest penalties on the parties violating such laws.

There is no more impropriety in such a law, than in one prohibiting the carrying of concealed weapons.

In but a few States has the experiment been tried of enforcing such a law. The law now in force in the State of Massachusetts, is the most complete one yet devised, but the machinery by which offenders against it are to be detected and brought to justice, is so imperfect, that it fails to carry out the purposes for which it was enacted.

Not only should the manufacture and sale of such nostrums be prohibited under severe penalties, but it should be made the duty of the health officers in every county or town, to examine the stock of all dealers, and if the prohibited nostrums are found in such stock, to *destroy them forthwith*. Aye more, the establishment where they are sold should be pronounced a nuisance, and abated; and in case of a second offence, the whole stock of the dealer should be summarily confiscated.

Another class of persons who should be considered *accessories before the fact*, are the venal publishers of newspapers and periodicals, who, in defiance of the best moral sentiment in the land, persist in publishing the advertisements of abortion-causing nostrums.

There is no excuse for this way of aiding and abetting, the crime. No publisher can plead ignorance of the intent and meaning of the notices of the nostrums which appear conspicuously every day in the columns of his paper. He knows that the "Periodical Pills," the "Golden Drops," and "Female Regulator," "Mother's Relief," are all for the purpose of causing abortion, and cannot be used legitimately for any other purpose.

It is bad enough to find such poisons advertised in the ordinary *news*-paper, but it is shocking to the moral sense of every good man or woman, to see such advertisements found in the columns of so-called *religious* papers. That this is the case, however, I have had ample means of verification.

Even newspapers that *begin* by refusing to admit such immoral advertisements, end somehow by prostituting their columns to this vile purpose.

Still another class of criminals should be reached by the law—namely, those who advise women to resort to criminal abortion, and those who instruct them in the use of drugs or instruments for that purpose. This class is larger than has been generally supposed. It includes *three* species of criminals; (a) unprincipled women who are in the habit of taking some drug, or using some instrument on themselves, and advise their female friends in their use; (b) venal nurses, *quasi* lecturers on physiology, health, etc., whose vile trail can be tracked all over this country, by the abortions which occur in their path; (c) physicians who have not the strength of principle requisite for all occasions, and who are influenced by entreaties and bribes to disclose to the erring woman, some means by which she destroys the child in utero.

Physicians are more annoyed and troubled by the importunities of their female patients, than persons out of the profession, can have any idea. I have already referred to this when speaking of the inducements to the commission of the crime.

These three species of criminals should be brought to justice, if possible, and a requisite punishment meted out to them. The two first species mentioned have become a real pest in the land, and are rapidly increasing. Every physician of any practice will bear me out in this assertion. Were some severe penalty affixed to this form of participation in the crime, it would make a notable decrease in the number of abortions caused, especially in the ratio of *embryocides*.

There are other real accessories *before* the fact, whom no law can at present be framed to reach. Criminals, who, without resorting to drugs, instruments, or other forcible measures, are nevertheless guilty of causing, indirectly, the destruction of the unborn child.

We are told in the Word, there are sins of *omission* as well as sins of *commission*.

We will briefly explain what is meant by the sin of *omission*, in this connection.

It is a fact well known to medical men, and of which the public are not entirely ignorant, that certain general or local diseases tend directly to cause abortion. From these causes the uterus is unable to retain and support the im-

pregnated ovum, and as a consequence, expels the embryo or foetus, prematurely.

A few of these diseases are, in their nature, *incurable*; but *the great majority are amenable to proper therapeutic measures, when used by competent physicians and surgeons.*

We will instance a few of these conditions, especially those of a local character, to better illustrate our position.

Inflammation and ulceration of the neck of the uterus, is the chief cause of abortion, the latter, probably, a more prolific cause than the former. That variety of abortion termed "*habitual*," is usually caused by a kind of ulcer known as the "fissured," although all the other varieties of ulceration may produce it in women of irritable constitutions.

Ulceration of the uterus in non-pregnant women is now considered to be as amenable to scientific treatment as many other curable diseases. Even ulceration during pregnancy, may be considered curable if proper care and attention be used. Until the time of Bennet,* it was considered unjustifiable to treat ulceration in the pregnant woman, and that the cure of such lesions was hardly possible without causing miscarriage. Dr. Bennet, however, dissipated this erroneous opinion, and proved, by numerous cases, that it was not only justifiable, but highly proper to treat ulceration under such conditions.

The experience of some of my colleagues, as well as my own, abundantly proves that habitual abortion may be prevented by timely and judicious treatment applied during pregnancy.†

Retroversion of the uterus occurring previous to, or during pregnancy, was once considered as a cause of inevitable abortion. But in the present condition of surgical science, we know that appliances have recently been discovered which do away with the necessity of abortion, or the need of allowing it to occur from that displacement. In view of these facts, we cannot reason otherwise than that in many cases of abortion from curable disease, either the mother, the father, or the physician, are accessories *before* the fact.

Ignorance of the existence of such causes, and their means of cure may suffice to relieve the parents from

* *Vide*, Bennet on Inflammation and Ulceration of the Uterus.

† *Ibid*: Transactions of N. Y. State Hom. Society, 1866.

the *onus* of blame in the matter. But it is often the case that one or both parents are aware that the habitual or occasional abortion is caused by some diseased condition, yet their aversion to having children prompts them to allow the abortions to occur, and to omit to apply to a physician for treatment of the causes of the accident.

What is the difference between this species of crime, and a case where a parent, knowing his or her child to be in imminent danger of life, refuses or neglects to remove it from certain death?

The family physician, or any medical man having the woman's health in charge, who neglects to notify the parents of the probability of miscarriage, and the necessity of proper treatment; or, on obtaining permission to treat the case, omits to treat it in a scientific manner, and allows the miscarriage to occur, becomes, to a certain extent, a criminal, and should be punished, for *malpractice* at least.

Besides these local lesions, there may be mentioned certain organic diseases, pelvic deformities, etc., which prevent the birth of a living child at full time, or at any period after "viability."

In these cases, (happily rare in this country,) the duty of the parents and physician is unmistakable. If the *parents* are aware of the existence of such deformity, it is their evident duty to prevent the occurrence of conception, and a neglect to do this, should be punished by law, for by such neglect, they become, to a certain extent, guilty of criminal abortion.

If a physician knowing an unmarried woman to be unfit for childbearing, by reason of physical deformity, or knowing a married woman to be in the same abnormal condition, and does not protest against the marriage, or the impregnation of such women, he too, becomes culpable for such omission of duty. How much more does he become culpable, when, after attending a confinement, when the life of the child had to be taken to save that of the mother, he neglects to inform the parents of the danger of future pregnancies, or to inform them how to prevent conception!

A perfectly humane law, framed for the purpose of preventing the destruction of the unborn child, should be so framed as to *prohibit* marriage in certain cases, and also to make it obligatory on the part of the husband and wife to

prevent conception, when insuperable obstacles to the birth of living children existed.

SECTION IV.

ACCESSORIES TO THE FACT.

In this class of criminals, may be mentioned several persons, although the line which divides them from the accessories *before* the fact, is difficult to define. The *husband or paramour* may be said to be of this class, when he procures the drug or instrument used, and *witnesses their use*, and also the occurrence of abortion from such use.

That this is not an unusual occurrence, the annals of criminal law fully prove. Nor is it uncommon for the husband or paramour to be a witness of the use of instruments in the hands of abortionists.

Nurses and other persons, may be accessories to the fact, when they witness the use of drugs or instruments, and are aware of their effects, and know the results which follow their use.

I am informed also that it is a custom among abortionists to supply the woman with some instrument, and witness their *actual* use, attending only to the removal of the murdered fœtus. They hope, by this course, to throw the whole responsibility upon the woman. The law should make such persons, accessories *to* the fact, if not a *principal* in the crime.

SECTION V.

ACCESSORIES AFTER THE FACT.

This class has not been recognized among those implicated in a case of criminal abortion. There is no reason why an accessory *after* the fact should not be considered guilty of criminal duplicity. *Any person who shall be informed of the occurrence of an abortion criminally induced, and shall not inform the proper authorities of such fact, should be considered as belonging to this class of offenders.*

The *husband*, or other relation, of a woman who has resorted to some means of destroying the fruit of concep-

tion, often becomes acquainted with the fact only after the deed has been done, and when all efforts at preventing the occurrence are unavailing.

What is the *duty* of the husband, or relations, in such a case? If I should say that they should report such guilt to the authorities, the public would, perhaps, protest against what they would term "*inhuman cruelty*." Such a denunciation, however, does not answer the question. How does such a case differ from one in which a person has been informed of a *homicide*, and locks the secret up in his breast forever? *In both instances the life of a human being has been destroyed.* What will be offered in mitigation of the offense first mentioned? It may be offered, that the woman guilty of the crime was one's wife, sister or daughter; that the happiness and honor of the family would be sacrificed; or that conjugal, filial or fraternal love interposed its powerful influence.

Admitting that these influences are potent, and will always be invoked and obeyed, does it make the offense less criminal, or the concealed knowledge of the offence morally justifiable?

What shall we say of the physician, esteemed to be honorable, upright and conscientious, who is the recipient of the guilty woman's secret?

What of the clergyman, to whom the woman confesses the crime in a moment of fear or repentance?

What of the nurse, or female friend, who is called upon for assistance, and who knows of the occurrence of the abortion from circumstantial evidence, or from the disclosures of the woman?

What is the *moral* duty of the persons above mentioned, who become possessed of the knowledge of the crime?

What should be the *legal* duty of such persons, placed under similar circumstances?

All these questions are pertinent to the subject of this paper.

When shall an elevated and purified popular sentiment, or a perfectly just and humane law, answer them fearlessly and truthfully?

SECTION VI.

HOW SHALL THEY BE DETECTED?

The detection of the criminals, whether principals or accessories, in cases of criminal abortion, is surrounded by difficulties which seem almost insurmountable. All writers on Medical Jurisprudence and criminal law have recognized the difficulty, and some of the highest authorities state that it is almost impossible to bring the offenders to justice.

In the case of almost any other crime of equal magnitude, the discovery of the criminals is much easier. Homicide is generally attended by so much violence and confusion, that the evidences are rarely hidden forever from human eye. The criminals may escape; all clue to them may, for a time, be lost, but they have left evidence which cannot be utterly destroyed, except by great pains and trouble, for which they have not opportunity.

Fœticide, on the contrary, is a deed committed in the darkness. It is shrouded by almost impenetrable shadows. The veil of secrecy which shuts in the acts of domestic life, often interposes between the law and the evidence of the crime. These evidences are easily removed, or utterly destroyed, and the secret of the deed forever hidden in the breasts of the criminals. The laws are exceedingly defective, if not absolutely inefficient, in respect to the means for the detection of the criminals. Until this is provided for, and the provision carried into effect, all existing laws are practically null and void.

The law-makers of no State or country have realized the importance of enacting laws of sufficient scope to cover the whole ground.

They have contented themselves with a declaration of the nature of the crime, (and even here have fallen far short of the demands of justice), the mode of trial, and the extent of the punishment, leaving the detection of the criminals to the principles of common law.

But common law is entirely inadequate to meet the requirements of the case. There will have to be some special legislation to meet the exigencies of this great and intricate crime.

Neither legal authorities, legislators, or the people, have ever had an adequate idea, either of the enormity of the crime, its extent, or its wide-spread prevalence. *It is a crime of equal enormity with homicide*, of more importance in its consequences, and demands for its prevention a more stringent law, than any relating to that crime.

The ratio of homicides to fœticides is vastly in favor of the latter, and yet the laws relating to homicide are far more perfect than those relating to the other crime.

While we claim but slight acquaintance with the law and its practice, we shall, nevertheless, freely proclaim our views on this subject. A law which shall be perfect in intent, grounded on right, effectual if enacted, may nevertheless conflict with the present established practice. But this is no reason why such a law should be thrust aside, and regarded as visionary and impracticable. Many of the best and most beneficent laws now in existence were once considered utopian, and their originators derided. This should teach us that all *just* laws emanate from intuitions of a divine sense of justice, and although we refuse to enact them in the present, the future will certainly call them into being.

We shall briefly give our views of the general plan of such a law as we deem necessary, and the means of making it *effectual*.

We have now no proper *officers* whose duty it is to set on foot measures for the discovery of the crime, or detection of the offenders in cases of criminal abortion.

In cases of homicide, the enormity of the crime is such that a general anxiety among the people stimulates the officers of the law into active efforts; moreover, in most cases of homicide, the friends of the deceased are active and untiring in their efforts to bring the murderer to justice.

But in cases of abortion, the people do not appreciate the enormity of the offence; the popular mind is obtuse on this subject, and will remain so until it is educated to realize the truth. Moreover, in this offence, *the deceased has no friends*. All its natural relations are, if not implicated in the matter, strongly indifferent to the detection and punishment of the murderers.

I believe that the only provision of law that will meet the demands of justice is, *the appointment of a BOARD OF*

REGISTRATION AND EXAMINATION, *in every county and large city of the United States.* This board may be appointed by the county supervisors, or the mayor and city council. It should consist of three or five members, and should be made up of citizens and physicians, and the physicians should not all be of the same school of medicine.

They should be in session a portion of every month, in a public office provided for them, which should be accessible at all times, and in charge of a competent and trustworthy secretary.

They should be paid salaries of such amount as to amply repay them for their services. (What are a few thousand dollars to a county or city, if the expenditure aids in suppressing a great social evil?) The duties of this Board should be:

1. To register the names of all the physicians, nurses, druggists and chemists in the county or city over which their jurisdiction extends.

2. To issue licenses to such persons, upon sufficient proof of their moral standing, professional attainments, etc.

3. To grant licenses to persons engaged in the manufacture and sale of medicines, chemicals, and surgical instruments, upon sufficient proof that such articles are not to be used for the induction of criminal abortion.

4. To receive from physicians, nurses and other persons, weekly or monthly reports of all cases of still-born children, and all cases of abortion occurring between the period of conception, and full term, stating the age of the fœtus, the sex, if possible, and the cause of the abortion. (The statistics obtained from this source would be immensely valuable, especially to the medical profession. There is no occasion for any false modesty or pseudo-delicacy in this matter. What is there disgraceful or improper in the placing on record, or even the publication of cases of abortion, when not *criminal*? The record of a miscarriage is no worse than the record of a natural birth, and the latter is practiced in all civilized countries, except in some States in the Union.)

5. To examine the goods of any druggist or vendor of medicines, and ascertain if among such stock of goods there are nostrums, medicines or instruments which are

used for the purpose of criminal abortion, and if such articles are found, to act in accordance with the special provision of a law made to meet such cases.

6. To examine the stock of books and periodicals of all kinds for sale by any dealer; also, the newspapers of the county or city, and if the law prohibiting the publication of advertisements relating to the means of causing abortion is violated, to report such violation to the proper officers, that they may be dealt with according to the special requirements of the law.

7. To cause the arrest and prosecution of any physician, nurse, or other person whom they believe, from observation or upon information, to have been guilty of causing criminal abortion.

8. To report all cases of violation of the law relating to criminal abortion, to the grand jury or prosecuting attorney of the county, when there exists doubt as to any point of law, or upon any question of jurisdiction.

9. To make returns to the prosecuting attorney of the county, or other proper officer, of all the reports made to them, every thirty days, or every three months; also, each and every member should be required to report to the above named officer any and all cases of fœticide which may have come to their knowledge, as soon as possible after such information has been received.

In order to make the existence of this board of any practical value, the following requirements should be incorporated into the law :

1. Every physician, and every person, man or woman, who pretends to heal the sick, by medicines or otherwise, should be obliged, under heavy penalty for neglect, to procure a *license* from the board for the practice of their art.

2. All *nurses* whose business it is to attend upon the sick, either of themselves or under the direction of a physician, should be obliged to procure a license as above.

3. All physicians, nurses, and others above named, should be obliged to make oath that they will truly report all cases of still-birth, or abortion, of which they have any knowledge; the time of its occurrence, and the alleged or supposed causes thereof within ten days after the occurrence, or immediately, if the ends of justice are to be benefited thereby.

4. All dealers in drugs and medicines, or manufacturers

thereof, should be obliged to take out license, and make oath that they will not sell or manufacture any drug, nostrum or instrument which may be used for the purpose of causing abortion or premature labor, or sell such articles, unless upon the written prescription of some physician known to them, which prescription they shall place on file, for future examination if necessary.

5. Any person cognizant of the occurrence of an abortion, from any cause, or of the sale of any drug or instrument for causing criminal abortion, should be obliged to report the same to the board, or on neglect thereof be heavily fined.

The prosecuting attorney should be made the president *ex-officio* of the board of registration.

The prosecuting attorney should be obliged, by special provision of the law, to prosecute all the criminals, in all cases of feticide, and for each prosecution a liberal fee should be granted. This latter clause is important to insure the prosecution of cases of criminal abortion with any vigor. At present the fees of this officer are so small, that, in the absence of high moral impulse, there is no inducement for him to take hold of such cases.

There are other reasons why it is almost impossible to get any assistance of the prosecuting attorney to bring to trial the criminals in a case of criminal abortion, namely: the faulty state of public opinion in relation to this subject, and the unpopularity which would be attached to a prosecution, conducted as it should be.

But if a special law be enacted, obliging him to arrest and bring to trial all criminals pointed out to him by the above board of registration, there would be some prospect that the large class of criminals before mentioned would not go unpunished, and the extent of the crime perceptibly checked.

SECTION VII.

HOW SHALL THEY BE PUNISHED?

The punishment inflicted by law upon the person found guilty of causing criminal abortion, at any period of pregnancy, should be fixed and uniform in all the States of the Union. The conviction and punishment should not be dependent upon any evidence relating to the absurd and

and obsolete distinction of "quick" and not "quick," nor should the law require it to be proved that the death of the child was intended; nor that the woman upon whom the crime was attempted to be committed was actually pregnant.

The proof of *intent* and *attempt* to destroy the fœtus, at any date of utero-gestation, or even if the attempt be made upon a woman *not* pregnant, should be sufficient to insure conviction and punishment.

In dealing with a crime of such magnitude and frequency, the moral sense of a nation or a State should not allow the law to distinguish between the *actual perpetrator of a fœticide* and one who *attempted and desired to commit it*.

SECTION IX.

THE PUNISHMENT OF THE CRIMINALS.

In some States the punishment inflicted on a person found guilty of causing criminal abortion is notoriously inadequate.

It ranges from imprisonment for ten years or more, down to incarceration in a jail for three months, and from a fine of five thousand, to five hundred dollars.

Theoretically, and to meet the highest demands of justice, the punishment of the principals should be the same, whatever the period of pregnancy is, at which the attempt is made to commit the crime. *Practically*, or until the popular sentiment is educated up to the proper point, it may be impossible to procure a law so stringent and severe. If any difference in the quality of the punishment is recognized, it should be based on the *three* physiological stages of foetal life, namely:

1. If the crime be committed, or attempted to be committed, in the period from the date of conception to the end of the third month, it should be designated as *embryocide*, and the punishment be imprisonment for a term not less than *seven years*, and more at the discretion of the court.

2. If the crime is committed in the period between the third, and end of the sixth month, it should be designated as *fœticide*, and punished by an imprisonment of not less than *fourteen years*, or more.

3. If the crime be committed after the end of the sixth

month, or at the expiration of the period of natural pregnancy, it should be designated as *infanticide*, and punished by imprisonment, not less than twenty-one years, *or for life*.

In reality, there is no difference between the destruction of the child in this last period, and its destruction after natural birth. At the end of the sixth month, and in rare cases sooner, the fœtus is said to be "viable," *i. e.*, is capable of living separate from its uterine attachments. It is therefore, physiologically and legally, equivalent to a child after it is born. It may even be considered equivalent to an adult human being.

It is an absurdity to use the phrases "embryotomy," and "craniotomy," or any of the names invented by obstetricians to disguise the real nature of the act. It would be just as proper to designate the killing of a man "homotomy," as to apply the name "embryotomy," to the justifiable destruction of the fœtus. Perhaps if the right names were adopted, obstetricians would not so frequently and needlessly resort to the destruction of the child.

Legal and medical terms should be consistent. If embryocide, fœticide, or infanticide, is ever really necessary, it should be recorded as *justifiable*, and all other names for the act, abolished by law.

In no instance should the law of any State or country, provide for the *payment of a fine*, as punishment of a *principal* in the crime.

The acceptance by the government of a sum of money as payment, to absolve the criminal, is repugnant to the moral sense of every good man. It is in fact, nothing more, or less, than a *license* to commit the crime. It allows a distinction in favor of wealth, which should not be permitted by any nation on earth.

SECTION X.

THE ACCESSORIES TO THE FACT.

The laws of nearly every State and country, recognize the offence of this class of criminals, to be nearly equal in enormity with the *principals*.

In fact a distinction is rarely ever made, between the

two classes, but the same penalties and punishments usually are meted out to both.

For the sake of systematic precision, however, the *particeps criminis*, and the *principals*, should be kept separate in the legal and moral discussion of this subject.

In regard to the punishment of the accessories *to* the fact, there can exist no valid reason why it should not be severe; a little less severe only, than that which should be visited upon the principals.

SECTION XI.

THE ACCESSORIES BEFORE THE FACT.

A law which did not recognize the great criminality of this class, and provide for their adequate punishment, would not come up to the requirements of the age, nor be in accordance with the demands of morality and justice.

In many States, this class of criminals are not mentioned at all, in the laws relating to criminal abortion. For this reason such persons escape prosecution, and avoid the great retribution they deserve.

The English law includes those who "aid, counsel, or abet," the crime. In France, Austria, Germany, and Italy, the "advisors and abettors," of the crime, are severely punished. The only State which has shown any real advancement in this direction, is Massachusetts. The law of that State distinctly mentions as criminals, all persons who *advise* the commission of the crime; or who advertise medicines, instruments, etc., to be used for the purpose of inducing abortion. This law was copied after the one reported by Dr. Storer, in 1857, and is the best law now enacted by any State. Some *special* legislation is needed, however, before a proper punishment can be visited upon this class. Manufacturers of nostrums and instruments; persons who sell them; druggists who unlawfully retail medicines, such as oil of tansy, gossipium, savin, etc., when not demanded by a physician's prescription; physicians who prescribe drugs used for the purpose of causing abortion, or advise the use of any instruments; publishers who print advertisements of nostrums, etc., and finally, any person, who shall advise or instruct a woman in the use of any means for the purpose of inducing abortion, should be severely punished in every State and country.

In the case of manufacturers and dealers, in addition to a heavy fine or imprisonment, the objectional goods should be seized by the proper authorities, and destroyed or confiscated. Physicians, druggists, nurses, etc., should be heavily fined or imprisoned, and their licenses revoked, thus prohibiting them from pursuing a profession or trade which their criminality had disgraced.

Publishers of newspapers, periodicals, pamphlets, etc., should be heavily fined for the first offence, and if it be repeated, the periodical, or any publication, should be suppressed or abated as a public nuisance.

In any case, when, by confession, or otherwise, it is ascertained that *any person* shall have advised to the deed, such persons should be punished to such an extent, as to deter others from alike conduct.

SECTION XII.

ACCESSORIES AFTER THE FACT.

No law is now in operation, nor has one been suggested, which provides for the punishment of this class. Yet the moralist must admit that they are really criminals, to a certain extent. Their conduct may aid directly in the *repetition* of the crime. They also aid in defeating the ends of justice.

Shall not the father, husband, relative or friend, be punished in some manner, for secreting the knowledge of a foeticide from the authorities?

Shall not a physician, or nurse, be punished for similar conduct?

Although some punishment is evidently right and proper, I shall offer no suggestions, with the exception of the manner in which physicians and nurses should be punished.

I do not hesitate to assert, that physicians or nurses, should be obliged to *forfeit their license for a period of time*. This would be a sufficient punishment, and prevent a repetition of the offence. By making the woman a *principal* in the crime, all information, prompted by malice, would be provided against. No honorable physician, or conscientious nurse, need fear the effects of such a law. It would greatly tend to prevent criminal abortion, and elevate, in a high degree, the standard of the medical profession.

APPENDIX.

At my solicitation, C. C. Bonney, Esq., of this city, favored me with a perusal of the manuscript of the foregoing pamphlet, and also with the draft of a law, embodying, as largely as possible, the sentiments therein set forth. I herewith present a copy of the proposed law, together with a letter explaining its provisions. This law does not come up to my ideas of justice, but is, however, better than any yet enacted :

CHICAGO, March 25, 1867.

PROF. E. M. HALE ; My Dear Sir :

In compliance with your request, I herewith send you a draft of a proposed act, to define and punish the crime of abortion. I heartily approve the views set forth in your admirable treatise on what you, not inappropriately, term the "Crime of the Nineteenth Century ;" but, in framing a law, I have, of course, endeavored to conform it to the existing order of things in criminal jurisprudence. The principles of the law of homicide ; the powers and duties of grand juries and prosecuting attorneys ; the rules of evidence, and the mode of trial, in criminal cases, are well understood, and, in skillful hands, are much better adapted to the detection and punishment of crime than the public generally suppose. The framer of a statute should always aim, not to specify details, but to declare general rules, under which the details may be conveniently arranged by the judiciary in the administration of the law. And it seems to me that the means suggested in the accompanying draft would be found sufficiently stringent for practical purposes, and at the same time free from any provision calculated to excite the opposition of either the medical profession or the public.

Very respectfully and truly yours,
CHARLES C. BONNEY,

AN ACT CONCERNING THE CRIME OF ABORTION.

SECTION 1. The human embryo is a human being, from the date of its conception ; and its destruction, without just cause, is a criminal offense. Criminal abortion is the willful and felonious destruction of the life of an unborn child, at any time between the date of conception and the date of delivery. Justifiable abortion is the destruction of the life of an unborn child, for the purpose of saving the life of the mother, or to prevent serious bodily injury to her. (A.) All persons who shall willfully take any active part in the procurement or perpetration of the offense of criminal abortion, shall be deemed principals, and punished accordingly, including the woman on whose per-

NOTE.—A. See sections 32, 33, 34, of Illinois Statute of Criminal Jurisprudence, concerning justifiable homicide.

son the abortion be perpetrated, in case she shall feloniously consent thereto. Every person who shall be guilty of the crime of abortion, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for such term as, in the opinion of the court, the circumstances shall warrant and the public welfare require. (B.)

SEC. 2. An accessory to the crime of abortion is one who, knowing that the crime is about to be attempted, promotes the same, by counsel or otherwise, without active participation therein; or who, knowing that the crime has been committed, feloniously concurs therein, and aids in its concealment. All such accessories shall, on conviction of such offence, be punished by fine, and imprisonment in jail, or either of them, in the discretion of the court.

SEC. 3. The public advertisement for the sale of any drug or instrument, designed to be used for the purpose of producing abortion, is contrary to the policy of the law, and is hereby declared to be a high misdemeanor. Such drugs and instruments may be lawfully sold by druggists to physicians, or to other persons, upon the prescription of a physician. If any person, whether manufacturer, merchant, publisher, printer, editor, or agent, shall willfully be a party to the printing or publishing of any advertisement, hand-bill, or announcement, which shall be calculated to induce persons who may desire to commit the crime of abortion, to purchase any drug or instrument to be used in the perpetration of that offence, the person so printing or publishing shall, on conviction thereof, be fined in such sum, and imprisoned for such term, and required to enter into such bonds, as the court shall deem sufficient to suppress the evil, and deter others from committing the like offence.

SEC. 4. Every physician, every surgeon and every retail druggist shall, during the month of January in each year, apply to the clerk of the county court for a license to pursue their respective avocations; and such license shall be granted, on compliance with the following conditions, and not otherwise, namely: The applicant shall file with such clerk an affidavit, setting forth what study and experience has fitted him to carry on the business he desires to follow; and, also, setting forth that, during his previous residence in the county, he has faithfully reported to the State's attorney every case of criminal abortion, if any, that has come to his knowledge. And if any person shall attempt to carry on the business of a physician, or surgeon, or retail druggist, without such license, he or she, on conviction thereof, shall be punished by such fine and imprisonment and both, or any or either of them, as the court shall deem sufficient to effectually suppress the evil, and prevent a repetition of the offence. A copy of this act shall be printed on the back of every such license; and said license shall be constantly exposed to view, in the place of business of such physician, surgeon, or retail druggist, under penalty of such fine as the court, on conviction, shall, in its discretion, inflict. False swearing in such affidavit shall be deemed perjury, and punished accordingly.

SEC. 5. Every judge of a court having jurisdiction of the offences specified in this act, shall, at least at the first term of his court, which

NOTE.--B. My observations have given me an inveterate prejudice against the usual legislative regulations of maximum and minimum penalties. Under them, the great criminals frequently escape without just punishment, and the minor offenders suffer too severely.

shall be holden after the first day of January in each and every year, especially charge the grand jury concerning the investigation and presentment of such offences.

Compare the high moral tone of the above, with the following amended law of the State of Illinois, which, although infinitely better than the old law, is worthy no better name than a disgrace to our Statute books, and to the Legislature which enacted it. It is due to the people of this State, that a law similar to, or identical with the one proposed by Mr. Bonney, be enacted at the next session of our Legislature.

AN ACT TO AMEND THE CRIMINAL CODE OF THE STATE IN RELATION TO
ABORTION.

Be it enacted by the People of the State of Illinois, represented in the General Assembly :

SECTION 1. If any person shall, by means of any instrument or instruments, or any other measure whatever, cause any pregnant woman to miscarry, or shall attempt to procure or produce such miscarriage, the person so offending, shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be confined in the penitentiary for a period not less than two, nor more than ten years.

SEC. 2. If any person shall, in the attempt to produce miscarriage of a pregnant woman, thereby cause and produce the death of such woman, the person so offending, shall be deemed guilty of murder, and shall be punished as the law requires for such offence.

SEC. 3. The provisions of this act shall not apply to any person who procures, or attempts to produce the miscarriage of any pregnant woman for *bona fide* medical, or surgical purposes.

SEC. 4. This Act shall be in force, from and after its passage.

APPROVED, February 28th, 1867.

TESTIMONY RELATING TO JUSTIFIABLE FETICIDE.

For the purpose of obtaining the testimony of the most eminent physicians of our school, as to the frequency of justifiable feticide, i. e., the destruction of the child at any date of pregnancy, I have written to the Professors of Obstetrics and Diseases of Women, in our Medical Colleges, and also to many other physicians who had occupied that position, or whose large experience would be valuable.

The following testimony from those gentlemen will show how rarely the life of the child need be sacrificed, to save the life of the mother, or to rescue her from serious injury.

Professor John Ellis, of New York, writes: "I have never been obliged to cause miscarriage, abortion, or premature labor, either for the purpose of saving the life of the mother, or rescuing her from imminent danger. In two instances I have carried the mother safely through, and delivered her of a healthy living child, when the physician previously in attendance had declared such a result impossible."

Prof. H. N. Guernsey, of Philadelphia, states that but once, in all his professional life, has he been obliged to destroy the product of conception to save the life of the mother, and that was at "term," in consequence of pelvic deformity. In one of his lectures, the same Professor asserts that "all abortions can be prevented," and also "unnatural labor rendered normal."

Prof. John C. Saunders, of Cleveland, writes: "I have never yet had but one case demanding, for the safety of the mother, the destruction of the embryo, and never one requiring premature labor."

Prof. A. E. Small, of Chicago, informs me that he has never been obliged to destroy the fetus but *twice*, and that after due consultation, and to save the life of the mother. The operation in each instance was that of craniotomy at "full term;" cause: extreme deformity of the pelvis.

Prof. R. Ludlam writes: "In reply to your inquiry as to how often I 'have been obliged to destroy the life of the fetus, *in utero*, at any date of pregnancy, in order to save the life of the mother, or to rescue her from imminent danger,' I am happy to state that, in my experience, *it has never been necessary*. In the light of recent improvements in the Art of Midwifery, and in such communities as those in which we practice, it must be true that such an expedient is very seldom demanded."

Dr. J. S. Douglas, of Milwaukee, states: "I have practiced medicine over 40 years, much of the time having a large obstetric practice. During all this time, it has been my good fortune not to meet with a single instance in which I deemed it necessary to resort to the destruction of the fetus, in order to save the life of the mother, or to rescue her from danger. I have had applications from many, who have desired me to destroy the fetus, on the ground that various physicians had assured them that they could not survive another labor at "full term." The result has never justified the prediction. I have several times stood alone against the opinion of two or three others, who believed this step necessary, but my opinion has been always justified by the result."

Dr. Samuel Gregg, of Boston, informs me that he cannot recollect of but *one* case in which he deemed it necessary, or indispensable, to save the life of the mother. The woman had suffered the most agonizing *gastritis*; she was emaciated to a skeleton, "and when I found no remedy effectual, *abortion* was recommended and produced, but the patient died in a few days after. Whether life might have been preserved by an earlier resort," he says he does not pretend to say.

Dr. J. H. Pulte, of Cincinnati, writes, that "In a professional activity of more than thirty years, during which time I was more or less engaged in obstetrical practice, I *never* met with a case which required, at my hands, the destruction of the fetus, at *any* date of gestation, except in a few cases, when towards the end of parturition, perforation and excerebration were indicated, but this only after the death of the fetus was believed to be inevitable."

Dr. Geo. E. Shipman, of Chicago, states that, in an extensive practice of twenty years, he has never found it necessary to induce justifiable "abortion."

Dr. T. G. Comstock, of St. Louis, writes as follows: "Since 1849, when I commenced the practice of medicine, I have attended over three hundred cases of labor, besides nearly as many more cases of miscarriages, or abortions. In all of the above three hundred cases of labor, I have only been obliged in one single instance to sacrifice the life of the child to save that of the mother." This case was one of convulsions occurring during labor. The head of the child was so disproportionately great, that craniotomy had to be resorted to.

Dr. Wm. H. Holcombe, of Louisiana, states that, in an extensive practice of many years, he has never been obliged to induce an "abortion," but he probably restricts the term to the period before viability.

My own experience may be briefly stated. In a quite large obstetric practice, extending through nearly sixteen years, I have been obliged to cause the destruction of the fetus but *four* times, and in each instance it was done *to save the life of the mother*.

First case. In the second month of pregnancy, a *retroversion* of the uterus occurred, from jumping from a carriage. I was not called until five days after the accident. The uterus was greatly inflamed; the evacuations from the bladder and bowels obstructed; all the means known then for replacing the uterus by *external* force was resorted to, aided by internal medicines to reduce the inflammation. All were of no avail, and the woman was fast sinking. As a last resort, the *sound* was introduced, and the organ replaced. Abortion was, of course, caused, but the patient rallied, and made a good recovery.

Second case. A *retroversion* in the third month, accompanied by the most agonizing pains, and continued convulsions. All external means failed, and the *sound* was used. The patient was convalescent in a few days.

In both of these cases abortion was inevitable, but the woman might have died while I was waiting for the occurrence.

Third case. In this instance severe vomiting had existed for months. The woman was dying of exhaustion; the vomited matter consisted of dark, grumous, bloody fluids. After consultation with another physician, abortion (at the fifth month) was recommended and performed. The fetus was expelled with very little loss of blood; the vomiting ceased; the woman slowly rallied, and finally recovered.

Fourth case was one in which terrible convulsions occurred, at the sixth month, in connection with a gastritis and obstinate bloody vomiting, which had lasted for months. The convulsions so threatened the life of the mother, that, after a consultation, it was deemed impossible to wait until "viability." Premature labor was induced, the convulsions and vomiting ceased, and the patient recovered.







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